

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

THEODORE BELL,

Petitioner,

v.

Case No. 11-cv-14604

STEVEN RIVARD,

Respondent.

**ORDER DENYING PETITIONER'S
MOTION FOR APPOINTMENT OF COUNSEL**

Petitioner Theodore Bell has filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner challenges his Wayne County Circuit Court convictions for second-degree murder, Mich. Comp. Laws § 750.317, assault with intent to cause great bodily harm less than murder, Mich. Comp. Laws § 750.84, felon in possession of a firearm, Mich. Comp. Laws § 750.224f, and use of a firearm in the commission of a felony, Mich. Comp. Laws § 750.227b. The petition raises three allegations of ineffective assistance of counsel and one claim that there is an insufficient factual basis for his murder and assault convictions. Now before the court is Petitioner's "Motion for Appointment of Counsel." (Dkt # 17.)

There is no constitutional right to counsel in habeas proceedings. See *Cobas v. Burgess*, 306 F.3d 441, 444 (6th Cir. 2002). The decision to appoint counsel for a federal habeas petitioner is within the discretion of the court and is required only where the interests of justice or due process so require. *Mira v. Marshall*, 806 F.2d 636, 638 (6th Cir. 1986). "[H]abeas corpus is an extraordinary remedy for unusual cases" and the

appointment of counsel is therefore required only if, given the difficulty of the case and petitioner's ability, the petitioner could not obtain justice without an attorney, he could not obtain a lawyer on his own, and he would have a reasonable chance of winning with the assistance of counsel. See *Thirkield v. Pitcher*, 199 F. Supp. 2d 637, 653 (E.D. Mich. 2002). Appointment of counsel in a habeas proceeding is mandatory only if the district court determines that an evidentiary hearing is required. *Swazo v. Wyo. Dep't of Corrs. State Penitentiary Warden*, 23 F.3d 332, 333 (10th Cir. 1994). If no evidentiary hearing is necessary, the appointment of counsel in a habeas case remains discretionary. *Satter v. Class*, 976 F. Supp. 879, 885 (D.S.D. 1997).

Counsel may be appointed, in exceptional cases, for a prisoner appearing *pro se* in a habeas action. *Johnson v. Howard*, 20 F. Supp. 2d 1128, 1129 (W.D. Mich. 1998). The exceptional circumstances justifying the appointment of counsel to represent a prisoner acting *pro se* in a habeas action occur where a petitioner has made a colorable claim, but lacks the means to adequately investigate, prepare, or present the claim. *Id.*

In the present case, Petitioner's first petition for writ of habeas corpus raised both exhausted and unexhausted claims. (Dkt. # 1.) After Respondents's response to the initial petition, the court dismissed the petition without prejudice to allow Petitioner an opportunity to exhaust all of his claims before returning to this court. (Dkt. # 11.) Petitioner has now filed his Amended Petition. (Dkt. # 16.) The court has not yet required a response from Respondent.

After a preliminary review of the petition for writ of habeas corpus and accompanying memorandum of law, the court finds that the interests of justice do not presently require appointment of counsel. 18 U.S.C. § 3006A(a)(2)(B); 28 U.S.C. foll. §

2254, Rules 6(a) and 8(c). Further, at this point it does not appear that the court will need to conduct an evidentiary hearing. See *Satter*, 976 F. Supp. at 885. The court will order Respondent to respond to the Amended Petition by separate order. Accordingly,

IT IS ORDERED that Petitioner's Motion for the Appointment of Counsel (Dkt. # 17) is DENIED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: September 14, 2016

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, September 14, 2016, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522